

**UTILITY ENGINEERING SERVICES
REIMBURSEMENT AGREEMENT
BETWEEN THE HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION AND
TESORO HAWAII CORPORATION**

THIS UTILITY ENGINEERING SERVICES REIMBURSEMENT AGREEMENT (the "Agreement") is entered into and effective this 15th day of February, 2012 (the "Effective Date"), by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, hereinafter referred to as "HART", and TESORO HAWAII CORPORATION, a Hawaii corporation, whose principal mailing address is 431 Kuwili Street, Honolulu, Hawaii 96817, hereinafter referred to as the "UTILITY AGENCY OWNER" or "UTILITY". HART and the UTILITY are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

RECITALS:

WHEREAS, pursuant to Hawaii Revised Statutes ("HRS") Section 51-1 (1993), the City and County of Honolulu (the "CITY") is authorized to construct, extend, own, maintain and operate mass transit systems on the island of Oahu;

WHEREAS, pursuant to Ordinance No. 07-001, the CITY is authorized to implement the Locally Preferred Alternative ("LPA"), which is a fixed guideway transit system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment ("MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West O'ahu (near the future Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Honolulu International Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, on December 16, 2009, the Honolulu City Council (the "Council") adopted Resolution 09-252, CD1, to initiate amendments to the Revised Charter of the City and County of Honolulu 1973, as amended ("Charter"), to create HART, a public transit authority responsible for the planning, construction, operation, maintenance and expansion of the CITY's fixed guideway rail system;

WHEREAS, at the 2010 general election, the voters approved revising the Charter as proposed by the Council to create HART, effective as of July 1, 2011;

WHEREAS, the Charter amendments provide that all lawful obligations owed by or to the CITY relating to the Rail Project on June 30, 2011, shall remain in effect on July 1, 2011, and that such obligations and liabilities shall be assumed by HART;

WHEREAS, the MOS includes the limits of the Kamehameha Highway Guideway Section of the Honolulu High-Capacity Transit Corridor Project, hereinafter referred to as the "KHG Project," in general accordance with the alignment depicted in the attached Exhibit "A";

WHEREAS, HART has determined that the KHG Project will require the relocation (vertical and/or horizontal), protection, installation, adjustment, and/or removal of the UTILITY's utility facilities, or some combination thereof, located within the limits of the KHG Project (hereinafter referred to as the "Utility Relocation");

WHEREAS, HART has determined that the Utility Relocation necessitated by the KHG Project will require engineering and design work;

WHEREAS, the engineering and design work contemplated under this Agreement constitutes services related to utility facilities owned by the UTILITY and that require specialized technical and professional knowledge and expertise specific to the UTILITY, which HART personnel are not able to provide;

WHEREAS, based on the foregoing Recitals and the fact that the UTILITY is the owner of the subject utility facilities, HART has determined that the UTILITY is uniquely qualified to provide such engineering and design services and can do so in a cost effective manner;

WHEREAS, the Parties desire to establish procedures to reimburse the UTILITY, as the actual owner of the subject utility facilities, for engineering and design work costs relating to Utility Relocation due to a Federal Transit Administration-funded project; and

WHEREAS, the cost reimbursement for the engineering and design work costs relating to the Utility Relocation is a sole source procurement pursuant to HRS Section 103D-306 (Supp. 2010) and related Hawaii Administrative Rules, and has been approved for sole source procurement pursuant to Section 3-122-81, Sole Source No. 2, Hawaii Administrative Rules.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated into this Agreement by reference, HART and the UTILITY, in consideration of the foregoing and the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, hereby mutually agree as follows:

1. KHG Project Utility Relocation. HART and the UTILITY have entered into this Agreement based on the following facts:

- a. HART is constructing the Honolulu High-Capacity Transit Corridor Project within the geographical limits of the KHG Project;
- b. The UTILITY owns or has the right to use certain utility facilities that are located, planned or within public road(s) and/or easement(s), hereinafter referred to as the "Facilities" that are located within the geographical limits of the KHG Project;
- c. HART has determined that the KHG Project will require certain Utility Relocation;
- d. Utility Relocation for the KHG Project requires certain engineering and design work as provided under this Agreement (hereinafter referred to as "Utility Engineering Services"); and
- e. HART and the UTILITY desire to enter into an agreement that establishes the contractual terms and conditions applicable to HART's reimbursement of the UTILITY's costs related to the Utility Engineering Services.

2. KHG Project Utility Engineering Services. Subject to the provisions, limitations, and conditions of this Agreement, the UTILITY, with its regular engineering forces or, subject to prior written approval by HART, through any qualified contractor or consultant, shall be reimbursed for the cost of performing and completing in a professional manner and in accordance with industry standards the Utility Engineering Services for the KHG Project.

- a. The UTILITY to Perform Utility Engineering Services Within Project Schedule. The UTILITY acknowledges the importance of completing the Utility Engineering Services contemplated under this Agreement in a manner consistent with the overall KHG Project schedule, the receipt of which is acknowledged by the UTILITY (such schedule, as may be modified by HART hereinafter referred to as the "KHG Project Schedule"). Accordingly, HART and the UTILITY shall coordinate and agree upon a schedule for the completion of the Utility Engineering Services (the "Engineering Schedule") for the Utility Relocation, including, but not limited to, any Betterment (as defined below) under this Agreement that is consistent with the KHG Project Schedule. The UTILITY agrees to use commercially reasonable efforts to complete all the Utility Engineering Services to be performed by the UTILITY hereunder according to the Engineering Schedule. Should the UTILITY not meet the requirements of the agreed-upon Engineering Schedule, the Parties agree to meet to discuss in good faith appropriate reduction of the reimbursement for the Utility Engineering Services due to delay costs

incurred by HART related to the UTILITY not meeting the requirements of the agreed-upon Engineering Schedule. Any changes and/or updates to the Engineering Schedule shall be coordinated and mutually agreed upon by HART and the UTILITY.

- b. Qualifications of the UTILITY. The UTILITY represents and warrants that the UTILITY and all personnel who may provide Utility Engineering Services under this Agreement on behalf of the UTILITY shall have the requisite licenses, permits, level of experience, and expertise required for the services to be rendered hereunder for projects of the scope, size, complexity, and nature of the KHG Project. All Utility Engineering Services performed by the UTILITY and by all personnel who may provide Utility Engineering Services under this Agreement on behalf of the UTILITY shall be performed only by qualified, competent personnel.
- c. The UTILITY to Provide Information to HART. To the extent such information is within the UTILITY and/or its agents' possession, the UTILITY shall provide HART and/or its KHG Design-Build Contractor (sometimes collectively referred to herein as "HART" as governed by the context in which such words are used) with information that illustrates the nature and locations of the UTILITY's Facilities including, but not limited to, all design drawings, shop drawings, as-built drawings, product data, test data, design criteria, specifications, design and construction submittals, construction schedules, fabrication drawings, erection drawings or similar documents, hereinafter referred to collectively as "the Information", within thirty (30) days of the Effective Date. The UTILITY shall provide other Information relating to the design and construction of the UTILITY's Facilities as requested by HART within thirty (30) days of such request. All Information provided by the UTILITY to HART shall be subject to the confidentiality provisions set forth in Section 7 of this Agreement.
- d. HART and the UTILITY to Provide Respective Contact Persons. HART and the UTILITY shall each notify the other in writing of the name, address, and telephone number of its respective contact person having charge over the Information.
- e. HART to Prepare Preliminary Plan Submittals. HART will compile the Information from the UTILITY that illustrates the nature and locations of the UTILITY's Facilities. HART will present this Information to the UTILITY in a series of preliminary plan submittals that will be used by HART to determine utility conflicts with the KHG Project facilities. The preliminary plan submittals will also note the nature and locations of the proposed relocated facilities of the UTILITY. The preliminary plan submittals furnished by HART shall be in the following format: 11" x 17" hardcopy drawings and/or electronic pdf files. Within thirty (30) days of receipt of the preliminary plan submittals, the UTILITY shall verify in

writing, to the best of its ability, whether the submittals accurately represent the Information, correctly depict the nature and locations of the UTILITY's Facilities, and are correct and complete. The UTILITY shall also verify in writing at this time, to the best of its ability, whether the nature and locations of HART's proposal for the UTILITY's relocated facilities are viable and workable. To the extent that revisions to the preliminary plan submittals are required, the UTILITY will work expeditiously with HART to incorporate such revisions.

- f. Design Reviews. In order to achieve a final design acceptable to both HART and the UTILITY, design effort will be required by both parties – including but not limited to infrastructure design by HART and detail design by the UTILITY. The Parties agree to work collaboratively, expeditiously and in good faith to achieve a mutually acceptable final design. Upon completion of initial design by HART and verification in writing by the UTILITY that the initial design is consistent with the Information, engineering markups, and all UTILITY standards and guidelines, HART and the UTILITY shall review and agree upon the final design for Utility Relocation. During the design review process, the Parties agree to review each other's design drawings and proposed revisions thereto in a timely manner, with a target review period not to exceed thirty (30) calendar days for each design review. Prior to the commencement of construction, HART shall approve in writing all final design plans related to Utility Relocation.
- g. Ownership of Project Plans. As used in this Agreement, the term "Project Plans" means all written materials, drawings, specifications, computer data and products, and models comprising the plans for the KHG Project that are developed under this Agreement. The Project Plans shall be the sole property of HART, except that the UTILITY shall retain co-ownership of the documents developed by the UTILITY.
- h. No Construction Work under this Agreement. This Agreement only covers Utility Engineering Services. Construction work related to the Utility Engineering Services will be covered by a separate Utility Facilities Relocation and Cost Reimbursement Agreement between HART and the UTILITY. Upon approval of the final design plans related to Utility Relocation, HART shall authorize the UTILITY to proceed with construction work pursuant to the terms of a separate Utility Facilities Relocation and Cost Reimbursement Agreement. The UTILITY shall not proceed with construction work without HART's written authorization in accordance with the terms of the Utility Facilities Relocation and Cost Reimbursement Agreement.
- i. Betterments. The Parties intend that the scope of HART's reimbursement obligations under this Agreement and the subsequent Utility Facilities Relocation and Cost Reimbursement Agreement shall be

limited to only that portion of the Utility Relocation necessary: (i) to permit the continued use, operation and maintenance of the Facilities in compliance with applicable laws, regulations, industry standards and commercially reasonable practices; (ii) to preserve the current condition, functionality and utility of the Facilities; and (iii) to construct the KHG Project improvements in accordance with the clearance standards and other design requirements set forth in HART's design criteria manual. Accordingly, any incremental costs attributable to Facility improvements which increase the capacity, capability, durability, appearance, efficiency, access or function of a Facility (collectively, the "Betterments") will be borne by the UTILITY except to the extent that such Betterments are required by changes in manufacturing standards, prevailing industry standards, or regulatory requirements, or required due to the unavailability of replacement materials. The Parties agree that the UTILITY's installation of the necessary appurtenances (system design, valves, pigs, traps, pipeline modifications, etc.) to adequately flush the existing Facilities to enable an efficient and safe cutover shall not be deemed a Betterment. Except for Betterments required by changes in manufacturing standards, prevailing industry standards, or regulatory requirements, or required due to the unavailability of replacement materials, the UTILITY's request for Betterments may be accepted or rejected at the sole discretion of HART. If accepted, HART and the UTILITY shall enter into a separate written agreement regarding Betterments that will specify, among other things, the funding and payment mechanisms for Betterment costs including, but not limited to, costs resulting from increased construction management expenses and all construction costs. Construction of Betterments will not begin unless and until HART and the UTILITY have executed a separate written agreement regarding Betterments.

- j. Construction Cost Estimate. During the course of design review of HART design and the detail design effort of the UTILITY, the UTILITY shall prepare a cost estimate for the ultimate cost of construction for the affected Utility Relocation (hereinafter referred to as the "Construction Cost Estimate"). The Construction Cost Estimate shall include a breakdown of labor, equipment and materials for the affected Utility Relocation, and shall be provided by the UTILITY to HART at first availability for use in developing the Utility Facilities Relocation and Cost Reimbursement Agreement between HART and the UTILITY.
- k. Unforeseen Utility Engineering Services. If unforeseen and additional work arises during the performance of the Utility Engineering Services, such additional unforeseen work shall be performed only after HART and the UTILITY agree that additional Utility Engineering Services are to be provided. If HART and the UTILITY agree that additional Utility Engineering Services are necessary, HART and the UTILITY shall agree upon and execute an amendment to this Agreement, if necessary, with

terms and provisions consistent with this Agreement, to cover all costs and expenses incurred by the UTILITY in completing any additional Utility Engineering Services.

3. Compensation and Payment. This is a cost-reimbursement contract, and subject to the provisions of this Agreement, HART agrees to reimburse the UTILITY its actual costs for the satisfactory performance and completion of the Utility Engineering Services for the Utility Relocation. HART's reimbursement to the UTILITY shall include, but is not limited to: (1) the salaries or wages in accordance with the agreed-upon hourly rates of pay shown in the pay schedule set forth in Exhibit "B" attached hereto; (2) costs such as reproductions, graphics, postage, mailings, advertisements, meeting facility costs, and other direct expenses as directed and approved by HART, provided such expenses are invoiced to HART at cost, plus the State general excise tax or use tax, where applicable, with reimbursement to be made following submission of a copy of the vendor invoice; and (3) payments made by the UTILITY to consultants and contractors in connection and in accordance with this Agreement.

- a. Total Aggregate Amount. HART and the UTILITY agree that the total aggregate amount of the costs to be reimbursed by HART pursuant to the above paragraph is ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00), which is established as the maximum payable under this Agreement (the "Total Aggregate Amount"). In the event of a change in the scope of the Project or other revision to the Project that affects the Total Aggregate Amount, the Parties agree to negotiate an adjustment to the Total Aggregate Amount, to be memorialized and executed in an appropriate written amendment to the Agreement. This amount is based upon the cost estimate contained in Exhibit "B," and the Parties mutually agree that the basis for said estimate in Exhibit "B" is the Preliminary Engineering drawings transmitted from HART to UTILITY on May 27, 2010. HART will provide the necessary surveys, easements, potholing; etc of the proposed relocation site to ensure the area is conducive for installing and operating UTILITY pipelines. HART agrees to reimburse the UTILITY for its actual costs not to exceed the Total Aggregate Amount. Subject to the terms and conditions of this Agreement, the UTILITY agrees to perform the Utility Engineering Services until the Agreement and all work pursuant to the Agreement are completed.
- b. The Hawaii General Excise Tax in effect at the time of billing will be allowed over and above the hourly rates and reimbursable expenses.
- c. The agreed-upon rates of pay in Exhibit "B" shall be subject to reasonable audit evaluation and approved by HART.
- d. Compensation for work and services shall be on a cost-reimbursement basis as provided under this Agreement. Reimbursable costs include the following:

- (1) **Agreed-Upon Hourly Labor Rates.** Any changes or updates to the agreed-upon hourly rates of pay shall be subject to prior written approval by the designated representative of HART (the "Officer-in-Charge").
 - (2) **Other Direct Costs.** Other direct costs shall be billed at cost without markup by the UTILITY and shall include actual authorized expenses incurred by the UTILITY for Utility Engineering Services.
 - (3) **Subconsultant Costs.** Subconsultant costs shall be invoiced at actual cost without markup by the UTILITY and shall include actual authorized expenses incurred by the UTILITY for Utility Engineering Services. Any work to be performed for the UTILITY by any subconsultant shall be approved by HART in writing prior to commencement of work. The UTILITY shall at all times be responsible for the acts and omissions of its subconsultants. The UTILITY shall be responsible for performance of all Utility Engineering Services, whether performed by the UTILITY or its subconsultants.
 - (4) **Public Service Company Tax, or Public Utilities Franchise Tax, if applicable.**
- e. Each month the UTILITY shall submit to HART an invoice for payment for KHG Project Utility Engineering Services completed to the end of the previous month consistent with the forms attached hereto as Schedules 1-3 to Exhibit "B". Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be completed pursuant to the rates and limitations set forth in this Agreement. Direct labor charges shall be documented by time sheets detailing the work, hours and employee name for which payment is being requested. Each time sheet shall be signed by the employee and the supervisor. Overtime work must be approved in advance by HART. Any overtime work performed without such advance approval will be reimbursed in accordance with the regular hourly rates set forth in Exhibit B. The UTILITY shall submit separate invoices for labor and Other Direct Costs and Subconsultant Costs, consisting of all receipts and subconsultant invoices as set forth in the attached schedules. Invoices will not be accepted if the labor and Other Direct Costs are combined. Other information and documentation shall be supplied as requested by HART. Payments made to the UTILITY shall be based on the time records required herein. The UTILITY expressly acknowledges and agrees that the UTILITY's compensation at the agreed-upon hourly labor rates shall be considered full payment inclusive of all direct labor, overhead, and

taxes. The agreed-upon hourly labor rates are intended to compensate the UTILITY for its actual cost of labor and no profit or markup will be allowed.

- f. Within thirty (30) days of receipt of an invoice consistent with this Agreement and upon HART's approval of the work satisfactorily completed and amount billed, HART shall pay the invoice as approved. At no time shall the total cumulative amount paid for the Utility Engineering Services exceed the Total Aggregate Amount. The UTILITY shall notify HART in writing no later than ten (10) working days after expending seventy five percent (75%) of the Total Aggregate Amount or whenever the UTILITY believes the costs and expenses for the Utility Engineering Services will exceed the Total Aggregate Amount, whichever occurs first.
- g. Prompt Payment to Subcontractors.
 - (1) Any money, other than retainage, paid to the UTILITY for work performed by its subcontractors shall be dispersed to the appropriate subcontractors within ten (10) days after receipt of payment; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes between the UTILITY and the subcontractor.
 - (2) Upon final payment by HART to the UTILITY, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of payment; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
 - (3) A payment request made by the UTILITY to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved, unless the payment request includes:
 - 1. Written substantiation of the amounts requested; and
 - 2. Certification by the UTILITY, to the best of the UTILITY's knowledge and belief; that:
 - a. The amounts requested relate solely to the performance of the Utility Engineering Services in accordance with the specifications, terms, and conditions of the contract;

- b. The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - c. The payment request does not include any amounts that the UTILITY intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.
- (4) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the UTILITY shall request sums that were withheld or retained from a subcontractor and are due to the subcontractor pursuant to Section 3.f(3). The UTILITY shall pay all retainage owed to the subcontractor within ten (10) days after payment to the UTILITY.
- (5) HART shall not undertake any obligation to pay or be responsible for the payment of any sums to any subconsultant or subcontractor.
- h. No Precedential Value. Due to the special nature of the Honolulu High-Capacity Transit Corridor Project, and pursuant to the terms of this Agreement, HART has agreed to reimburse the UTILITY for all actual, allocable and reasonable costs incurred in the performance of the Work for the limited purpose of effecting the Utility Engineering Services for the KHG Project with the greatest expedition and least interference with the operations of either of the Parties. The terms of this Agreement shall carry no precedential value with respect to other matters in which the UTILITY performs services.
- i. Final acceptance of the work contracted for under this Agreement and payment therefore shall not excuse the UTILITY from any liability for defects in performance which may subsequently become apparent, and such defects shall be promptly corrected by the UTILITY at no additional expense to HART. Defects in performance shall not include circumstances and/or conditions beyond the UTILITY's control.
- j. Audit. The UTILITY shall keep detailed and complete records verifying all costs for which the UTILITY seeks reimbursement pursuant to this Agreement and supporting the UTILITY's billings. Upon satisfactory completion of the UTILITY's work, HART and the UTILITY shall reconcile the payments made to the UTILITY under this Agreement to

confirm that such payments were made in compliance with the expense allocation set forth in this Agreement. Each Party agrees to, for a period of three (3) years following the satisfactory completion of the UTILITY's work, make any payment adjustment required as the result of the reconciliation performed. HART and the Federal Transit Administration shall have the right, upon reasonable notice, to audit all cost records and accounts of the UTILITY relating to this KHG Project for purposes of verifying the costs for which the UTILITY seeks reimbursement. Should an audit disclose that the UTILITY has been underpaid, the UTILITY will be reimbursed by HART. Should an audit disclose that the UTILITY has been overpaid, the UTILITY will, after being afforded an opportunity to review and verify the alleged overpayment, promptly reimburse HART in the amount of the overpayment. For purposes of this paragraph, the UTILITY is required to keep and maintain its records of Utility Engineering Services covered under this Agreement for a minimum of three (3) years after final payment is received by the UTILITY from HART. The UTILITY will ensure that its subcontractors comply with the requirements of this paragraph.

4. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (a) the UTILITY's completion of the Utility Engineering Services and HART's approval of the same as provided under this Agreement, or (b) termination of this Agreement by HART or the UTILITY for any reason or no reason upon thirty (30) days written notice to the other. Should the KHG Project be cancelled for any reason, HART shall terminate the Agreement for convenience subject to Section 4(b). Notwithstanding the termination of the Agreement, except in the case of termination for breach by the UTILITY, HART shall be responsible for the payment of all reimbursable costs properly accrued by the UTILITY prior to the date of the above-referenced written notice of termination.

5. Insurance. General Insurance Requirements. At all times during the term of this Agreement, and any extensions thereto, or until such time as action against the UTILITY or subcontractors for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, whichever is longer, the UTILITY shall, at his own expense, procure and maintain any and all insurance to cover the UTILITY's operations that may be required under any applicable federal, state or local law, statute or ordinance or regulation, including, but not limited to, applicable workers compensation and automobile liability insurance. In addition, the UTILITY shall maintain:

- (a) Commercial General Liability (CGL) insurance and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. HART, the CITY, and the State of Hawaii ("STATE") shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of HART, the CITY, and the STATE. The

UTILITY may self-insure this required coverage, by submitting a letter of self-insurance to HART and subject to written approval of HART, which shall not be unreasonably withheld.

- (b) Professional Liability Insurance. Should the UTILITY subcontract with a professional engineering entity to perform any or all of the Utility Engineering Services, the professional engineering entity shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the professional engineering entity and the professional engineering entity's employees or agents for liability arising out of errors, omissions, or negligence in the performance of the Utility Engineering Services. Such insurance shall remain in full force and effect continuously for the period of design and construction of the Utility Engineering Services, and for a period of one (1) year following substantial completion of construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed.

- (c) GENERAL CONDITIONS, applicable to all insurance herein required, unless otherwise specified above:

1. As used herein, "HART" shall mean the Honolulu Authority for Rapid Transportation, its appointed officials, employees, agents and servants. "CITY" shall mean the City and County of Honolulu, its elected and appointed officials, employees, agents and representatives. "STATE" shall mean the State of Hawaii, its elected and appointed officials, employees, agents and representatives.
2. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to HART.
3. All policies required herein shall be written to provide sixty (60) days advance written notice of cancellation (except ten (10) days for non-payment of premium) to the UTILITY and the UTILITY shall notify HART within ten (10) days of receipt of such notice. The UTILITY will provide proof of replacement insurance and confirmation of payment of premium prior to the expiration or cancellation of any insurance required.
4. Subcontractors Insurance. The UTILITY shall either:
 - a. Include all subcontractors as additional insureds under all insurance set forth in Sections 5(a) and 5(b), above; OR

- b. Cause each subcontractor employed by the UTILITY to purchase and maintain insurance of the types specified above. The UTILITY shall obtain and maintain evidence of subcontractors' insurance, and if requested by HART, the UTILITY shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- 5. Cross-Liability coverage. If the UTILITY's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- 6. The UTILITY is responsible for paying any portion of any loss not covered because of the operation of any deductible applicable to the insurance required herein. If HART is damaged by the failure of the UTILITY to maintain insurance as required in this paragraph, then the UTILITY shall bear all reasonable costs properly attributable to that failure.
- 7. Evidence of Insurance.
 - a. Upon execution of this Agreement by the UTILITY, the UTILITY shall furnish HART with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in Section 5(a), above.
 - b. Prior to commencing the work, the UTILITY shall furnish HART with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 5(b) above, if applicable.
 - c. With respect to continuing insurance as required under Sections 5(b) above, the UTILITY shall provide certificate(s) of insurance evidencing such coverage at the time of final payment, and thereafter whenever requested by HART.
 - d. The UTILITY shall provide certified copies of all insurance policies required above within ten (10) days of HART's written request for said copies.
 - e. Failure of HART to demand such certificate or other evidence of full compliance with these insurance requirements or failure of HART to identify a deficiency

from documentation that is provided shall not be construed as a waiver of the UTILITY's obligations to maintain such insurance.

- f. Endorsements; other requirements.
 - i. Show the certificate holders as the "Honolulu Authority for Rapid Transportation" and the "City and County of Honolulu" and be delivered to the Executive Director of HART, 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813; AND
 - ii. Include the contract number, and name of the project ("Utility Engineering Services Reimbursement Agreement between the Honolulu Authority for Rapid Transportation (HART) and Tesoro Hawaii Corporation, for the Kamehameha Highway Guideway Section").
- g. If the UTILITY elects to self insure any or all of the insurance required herein, subject to HART's approval, then, upon execution of this Agreement, and annually thereafter, the UTILITY shall provide written confirmation of such self-insurance that conforms to the requirements herein.

8. Failure to Maintain Required Insurance.

- a. Failure to maintain the required insurance may result in suspension or termination of this Agreement at HART's option.
- b. HART shall have the right, but not the obligation, of prohibiting the UTILITY or any of its subcontractors from entering the KHG Project site until the UTILITY has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by HART.
- c. If the UTILITY fails to maintain the insurance as set forth herein, HART shall have the right, but not the obligation, to purchase said insurance at the UTILITY's expense.

9. No representation of coverage adequacy. By requiring insurance herein, HART does not represent that coverage and limits will

necessarily be adequate to protect the UTILITY, and such coverage and limits shall not be deemed as a limitation on the UTILITY's liability under the indemnities granted to HART and the CITY under this Agreement.

10. HART reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed upon from time to time.

6. Indemnification. The UTILITY agrees, to the fullest extent permitted by law, to hold harmless and indemnify HART and the CITY from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses (including reasonable attorneys fees and costs) for any loss, injury, death, or damage, including, without limitation, claims for breach of contract, property damage, personal injury, or death of persons, but only to the extent such loss, injury, death, or damage arises out of a breach of this Agreement by the UTILITY, its officers, employees, agents or consultants under this Agreement, or any negligent act, error, or omission of the UTILITY, its officers, employees, agents or consultants, in performance of its obligations under this Agreement, subject to the limitations of liability contained in this Agreement. This paragraph shall survive the expiration, termination, or early termination of this Agreement.

7. Confidentiality. Unless otherwise agreed to by the UTILITY, HART agrees to keep confidential from disclosure to third parties (other than the KHG Design-Build Contractor), to the extent permitted under applicable laws, all of the Information provided by the UTILITY to HART including all verbal and written Information, including, but not limited to, Project Plans, System Plans, all drawings, including but not limited to, all design drawings, shop drawings, as-built drawings, fabrication drawings, erection drawings maps, product data, test data, specifications, design and construction submittals, construction schedules, and other written data provided by the UTILITY to HART in connection with the design and construction of the UTILITY's Facilities. Notwithstanding the foregoing, HART and the UTILITY acknowledge that HART constitutes a governmental agency subject to HRS Chapter 92F and that HART may also be subject to other applicable freedom of information laws. In the event that HART is required to disclose the Information to a third party pursuant to HRS Chapter 92F, or other applicable freedom of information laws, HART shall promptly provide the UTILITY with written advance notice at least fifteen (15) working days prior to the anticipated disclosure of such Information to enable the UTILITY to take any appropriate legal action. Further, HART has the right to disclose the Information without the prior written consent of the UTILITY: (i) as required by any court or other governmental authority, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, (iv) to its attorneys, accountants, financial advisors or other agents, or (v) to any funding sources, including but not limited to the federal government, and their advisors.

8. Force Majeure. Neither the UTILITY nor HART shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the

reasonable control of the non-performing Party, including, but not limited to, HART's suspension or delay of the Utility Engineering Services, and which could not have been avoided or overcome by the exercise of due diligence; provided that the Party claiming the excuse from performance has (a) promptly notified the other Party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent commercially reasonable, and (c) resumed performance as soon as commercially reasonable. The sole remedy for any Party claiming a force majeure event shall be a reasonable enlargement of time to perform its duties and obligations under this Agreement, as mutually agreed by the Parties.

9. Dispute Resolution. Any dispute related to this Agreement shall first be referred to a dispute resolution panel consisting of HART's Director of Engineering and Construction Honolulu High-Capacity Transit Corridor Project and the [UTILITY's representative]. Such parties shall meet in good faith to resolve the dispute in a manner consistent with this Agreement and the overall KHG Project schedule.

In the event HART and the UTILITY are unable to resolve the dispute by mutual agreement within a period of ten (10) working days, HART and the UTILITY shall begin a mediation process to be conducted as follows:

- a. Selection of Mediator. Either Party may give the other Party a notice requesting mediation. Within ten (10) working days after such notice is delivered, HART and the UTILITY shall select one person to act as mediator. If HART and the UTILITY are unable within such time to select such one person, each Party shall appoint a mediator within ten (10) working days after the expiration of the period in which the one mediator was to have been selected, and each of those two appointed mediators shall appoint a third mediator within ten (10) working days thereafter. The third mediator shall serve to mediate the dispute.
- b. Successor Mediator. In the event of the death, disability, or resignation of either the mediator or alternate mediator selected, a successor shall be selected by use of the same process as expeditiously as possible.
- c. Matter Referred to Mediator. The matter will be immediately referred to the mediator after selection of the mediator. HART and the UTILITY will begin mediation as soon as reasonably practicable. HART and the UTILITY agree that mediation on a particular issue will not necessarily result in stoppage of the Utility Engineering Services by the UTILITY. Unless prevented by the nature of the dispute, Utility Engineering Services will continue to be performed and HART will continue to reimburse the UTILITY for costs incurred by the UTILITY in completing Utility Engineering Services performed in accordance with the terms and conditions of the Agreement.

- d. Timing. Mediation will conclude no later than sixty (60) calendar days after referral to the mediator unless additional time is agreed to in writing by HART and the UTILITY.
- e. Costs. The fees payable to the mediator or mediators shall be borne equally by HART and the UTILITY unless otherwise agreed to in writing by HART and the UTILITY.

The UTILITY shall continue with its duties and responsibilities under the Agreement pending the outcome of any dispute, dispute resolution process, or litigation, except as provided in Section 9.c.

The informal dispute resolution and mediation processes described above must be exhausted before relief is sought through other processes, e.g., judicial process.

10. Assignment. This Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by each of the Parties.

11. Ownership of the Facilities. The Facilities shall at all times remain the property of the UTILITY.

12. Time is of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

13. Compliance with Laws, Regulations, and Other Requirements. The UTILITY shall comply with all federal, state, and CITY laws, rules, regulations and written policies governing the Utility Engineering Services to be performed pursuant to this Agreement, as such laws and written policies may be amended from time to time, as well as with all requirements that are imposed on utility relocation activities as a condition to or requirement of federal funding for the Honolulu High-Capacity Transit Corridor Project obtained by HART and/or the CITY from the United States Department of Transportation (Federal Transit Administration) and/or other governmental agencies, including, without limitation, requirements and policies for contract procurement, plans, specifications, cost calculations (including credits), estimates, billings, record keeping, reporting, and audits.

14. Applicable Law. This Agreement shall be governed by the laws of the State of Hawaii.

15. Headings. The headings used herein are for convenience only. The headings do not purport to define, limit, or extend the scope or intent of the language of the paragraphs to which they pertain.

16. Singular, Plural, and Gender. All words used herein in the singular number shall extend to and include the plural. All words used in one gender shall extend to and include all genders.

17. Authority. Each Party represents that it is authorized to enter into this Agreement, and that the Agreement constitutes a legal, valid and binding obligation of each Party and it shall be enforceable against each Party in accordance with the terms of the Agreement.

Furthermore, each Party represents and warrants that it is not aware of any federal or state laws, municipal regulations, State of Hawaii Public Utility Commission tariffs, decisions and orders, administrative rules and/or regulations, or any other applicable rules, regulations, or policies which would prohibit such Party from entering into this Agreement.

18. Incorporation of Exhibits. Every Exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

19. Survival. The representations, warranties, indemnities, waivers and dispute resolution provisions set forth in this Agreement, all payment obligations hereunder incurred prior to termination of this Agreement, and all other provisions which by their inherent nature should survive termination of this Agreement, shall survive the termination of this Agreement for any reason whatsoever, and shall remain in effect unless and until terminated or modified in writing by mutual agreement.

20. Waiver. The failure of any Party at any time to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein shall be deemed to be a continuing waiver of any such condition, term, covenant, representation or warranty.

21. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of HART and the UTILITY with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between HART and the UTILITY. This Agreement cannot be modified except by an instrument, in writing, signed by authorized representatives of HART and the UTILITY.

22. Severability. The portions of this Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Agreement shall not affect any other provision or provisions of this Agreement, and each term or provision of this Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

23. Binding Effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of HART and the UTILITY, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

HART-12 (11/11)

Certificate

The attached contract for Engineering and Design Portion of Utility Facilities Relocation and Cost Reimbursement Agreement for the Kamehameha Highway Guideway (KHG) Section with Tesoro Hawaii Corp.

(\$150,000.00)

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds will be available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. SC - HRT- 1200030
FUND Transit Fund (690 & 695)

HONOLULU, HAWAII

Date: FEB 15 2012

ACCOUNT NO.
690/7790 - 12 = \$79,170.00 (4064)
690/7790 - 12 = \$50,000.00 (4064)
695/7790 - 12 = \$20,830.00 (4064)
TOTAL = \$150,000.00


Interim Executive Director and CEO
Honolulu Authority for Rapid Transportation

24. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

25. Notice. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received after five (5) working days from the proper sending thereof unless proof of prior actual receipt indicating otherwise is provided. The UTILITY shall have a continuing obligation to notify HART of the persons authorized by the UTILITY to accept service of notices issued pursuant to this Agreement. Notices to HART shall be mailed or otherwise delivered (via facsimile transmission, hand-delivery or express mail) by the UTILITY to HART's Executive Director as follows:

Executive Director
Honolulu Authority for Rapid Transportation
1099 Alakea Street, Suite 1700
Honolulu, Hawaii 96813
Fax No.: 808-768-5110

Notices issued by HART to the UTILITY shall be mailed or otherwise delivered (via facsimile transmission, hand-delivery or express mail) to the UTILITY as follows:

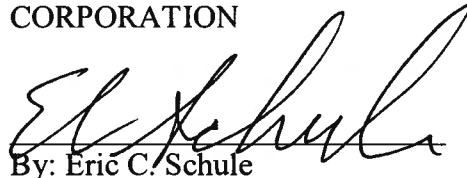
Tesoro Hawaii Corporation
431 Kuwili Street
Honolulu, Hawaii 96817
Fax No.: 866-873-3451

IN WITNESS WHEREOF, HART and the UTILITY have executed this Agreement by their duly authorized officers or agents on the day and year first above written.

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION


Kenneth Toru Hamayasu
Its Interim Executive Director and CEO

TESORO HAWAII
CORPORATION


By: Eric C. Schule
Its: Authorized Signatory,
Procurement

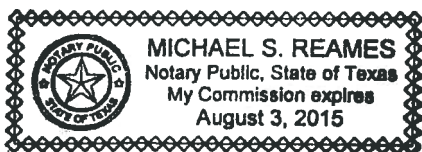
APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel

STATE OF TEXAS
COUNTY OF BEXAR

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)ss.
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On this 12th day of January, 2012, before me appeared Eric C. Schule, personally known to me, who, being by me duly sworn, did say that he/she is the Authorized Signatory – Procurement of Tesoro Hawaii Corporation, a Hawaii corporation; that said instrument was signed and sealed on behalf of said Tesoro Hawaii Corporation by authority of its Board of Directors; and said officer severally acknowledged said instrument to be the free act and deed of said corporation.



Michael S. Reames
Notary Public, State of Texas

My commission expires: 8-3-15

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____
Jurisdiction: _____

No. of Pages: _____

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)